

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

Board of Appeals Case No. S-2690
(OZAH Case No. 07-13)

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I. STATEMENT OF THE CASE

Petition No. S-2690, filed on November 3, 2006, seeks a special exception, pursuant to §59-G-2.38 of the Zoning Ordinance, to permit a professional (*i.e.*, attorneys') office for use by non-resident practitioners at 7511 Arlington Road, Bethesda.¹ The petition also seeks the waiver of parking regulations that govern the number of parking spaces, drive-aisle width, setbacks and screening for parking facilities in residential zones. The property is approximately 5,082 square feet in area and is described as Lot 3 of Block 12A in the Edgemoor Subdivision. It is zoned R-60. The applicant proposes to operate the use, a law office, within the 2½ story, existing residential structure.

On November 24, 2006, the Board of Appeals issued a notice (Exhibit 16) that a hearing in this matter would be held by the Hearing Examiner for Montgomery County on March 19, 2007, in the Second Floor Hearing Room of the Stella B. Werner Council Office Building.²

Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a memorandum dated February 22, 2007, recommended approval of the petition and the parking regulation waivers, with conditions (Exhibit 17).³ By letter dated March 8, 2007, the Planning Board for Montgomery County indicated its unanimous recommendation to approve the petition and the parking regulation waivers, with the conditions recommended by Technical Staff (Exhibit 18).

A public hearing was convened as scheduled on March 19, 2007, and testimony was presented by Petitioner and its witnesses. The People's Counsel, Martin Klauber, participated, but called no witnesses. There were no opposition witnesses, and there is no written opposition in this case. The

¹ The Petition itself (Exhibit 1(b)) refers only to a "Non-residential Professional Office (Attorneys);" however, Petitioner's Statement of Operations (Exhibit 3(a)) and Pre-Hearing Statement (Exhibit 3(c)) both refer to the inclusion of a "title company," as well. The implications of that fact will be discussed in Part II. C. of this report.

² Petitioner recently discovered that that notice sign had disappeared. Petitioner's attorney indicated that the sign was there prior to March 9, 2007, and had been regularly checked on since November 2006. Ms. Wallace promised that the sign would be immediately replaced, and the affidavit of posting (Exhibit 19) so reflects. Tr. 7-9. The People's Counsel did not feel that this brief lapse created a notice problem (Tr. 9), and the Hearing Examiner agrees, given the length of time the sign was posted, the direct written notice to neighbors and local civic associations and the reposting of the sign for more than 30 days before the Board will consider this matter.

³ The Technical Staff Report is frequently quoted and paraphrased herein.

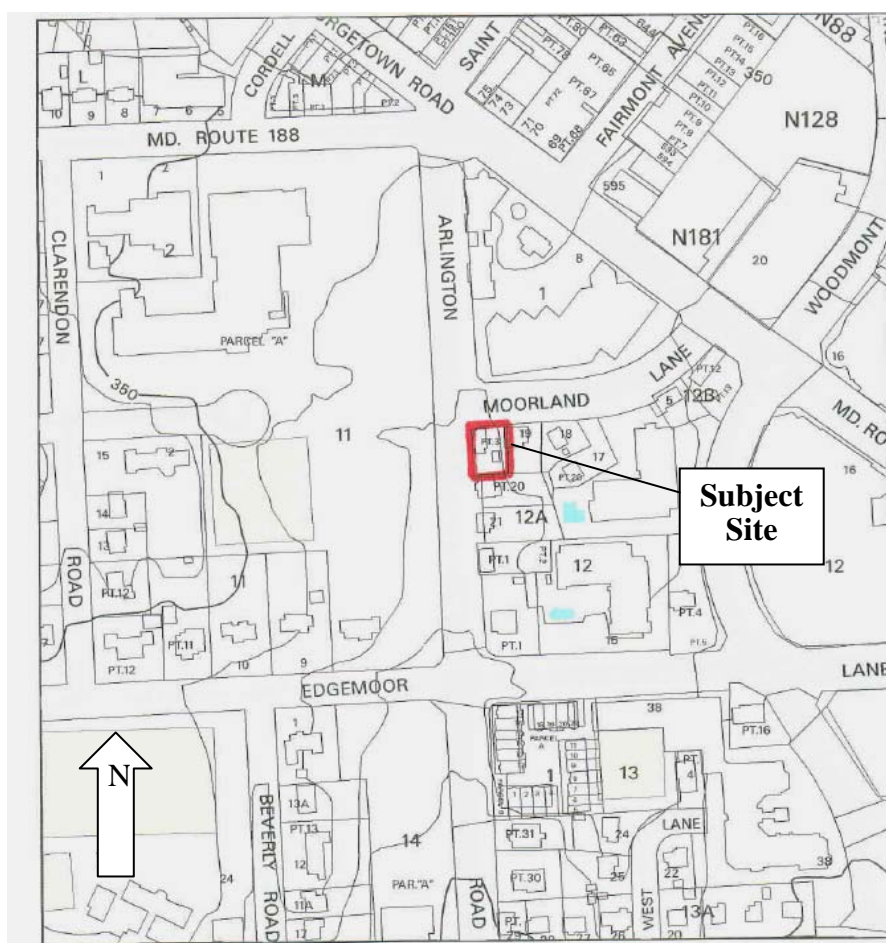
record was held open until March 26, 2007, to allow submission of revised plans. Petitioner filed the revised plans on March 23, 2007 (Exhibit 24), and the record closed, as scheduled, on March 26, 2007.

For the reasons discussed below, the Hearing Examiner recommends granting the petition, with conditions, and the requested parking regulation waivers.

II. BACKGROUND

A. The Subject Property and Surrounding Neighborhood

As noted above, the subject property is described as Lot 3 of Block 12A in the Edgemoor Subdivision of Bethesda, and it is zoned R-60 by virtue of a Corrective Map Amendment (G-856, approved September 19, 2006).⁴ It is on the southeast corner of Arlington Road and Moorland Lane. Its location is shown on a vicinity map provided as Attachment 1 to the Technical Staff report (Ex. 17):



⁴ The property had been incorrectly rezoned to TS-R by the Bethesda Central Business District Sectional Map Amendment. Council Resolution 15-1610 (Exhibit 11) restored the site to the R-60 Zone.

The property is improved with a 2 ½ story, single-family dwelling, constructed in 1928 and containing approximately 2,115 square feet of interior space. It was recently refurbished and is currently vacant. The following photos of the house were supplied by Petitioner as Exhibits 9(a) through (d):





Ex. 9(a) - Southern Side Yard (Taken from southeast corner of the property, looking toward Arlington Road; Subject House is out of view to the right)



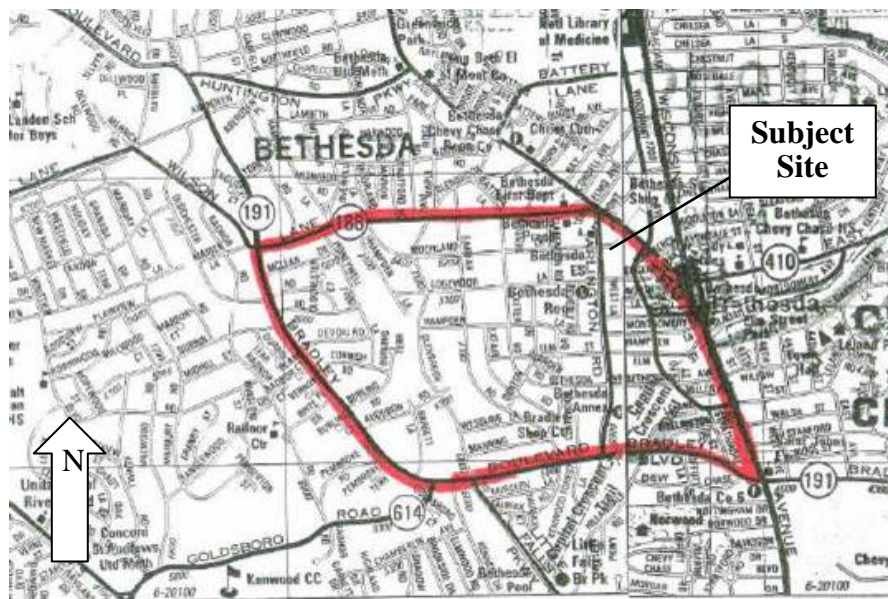
Ex. 9(b) – Back Yard (Taken from northeast corner of the property, along Moorland Lane; a small portion of the Subject House is visible on the right.)

The property was platted in 1925 as a 6,500 square-foot lot, but subsequent right-of-way acquisitions have reduced it down to its existing area of 5,082 square feet. Tr. 16-17. There's a driveway for the property located on Moorland Lane and a small parking area to the east and south of the structure itself. Although the existing dwelling fronts on Arlington Road, the property has access to Moorland Lane via the existing driveway. Sidewalks exist along the site frontage on both Arlington Road and Moorland Lane. On-street parking is permitted on Moorland Lane, but not on Arlington Road in front of the site.

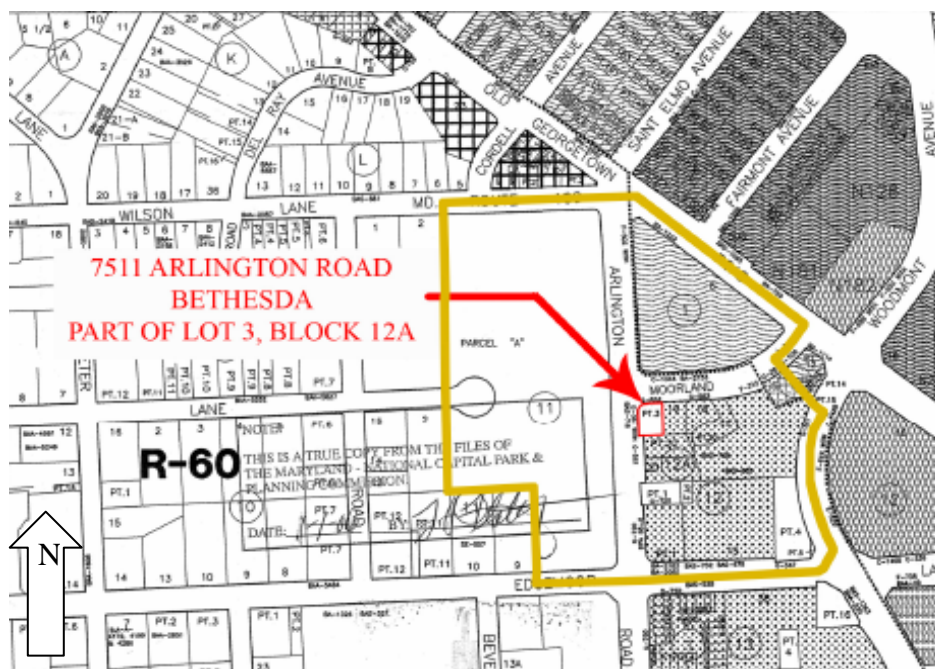
Although the subject property is zoned R-60, the property is located in the Transit Station Residential (TS-R) District of the Bethesda Central Business District Sector Plan. Bethesda Elementary School is located across Arlington Road from the subject property. To the east of the property is a single-family home being used as a medical office on Moorland Lane. To the north of the property and across Moorland is a three-story office building. Abutting the property to the south is another single-family home being used as an insurance agency. Exhibit 17, p. 2. According to Technical Staff, most of the houses along Arlington Road have been converted to professional offices.

The general neighborhood is not defined in the text of the Technical Staff report, but

Attachment 2 to the report is a map is entitled “Neighborhood Map,” and it contains a red-lined area that the Hearing Examiner presumes is Technical Staff’s proposed definition of the neighborhood. It is shown below:



Staff’s defined neighborhood is bordered by Wilson Lane and Old Georgetown Road to the north and Wisconsin Avenue to the East, and would extend all the way to Bradley Boulevard on the south and west. John Sekerak, Petitioner’s land use planner, felt that that definition would extend the general neighborhood far beyond the area that would be impacted by the special exception. Tr. 19-20. His proposed general neighborhood is shown on Exhibit 20, below:



The Hearing Examiner agrees with Mr. Sekerak. It is hard to imagine how this small special exception would have any impact all the way to Bradley Boulevard on the south and the west. Mr. Sekerak's neighborhood definition is much more sensible in this case. It is bordered by Wilson Lane and Old Georgetown Road to the north; Woodmont Avenue to the east; Edgemoor Lane to the south; and the western edge of Bethesda Elementary School to the west. This definition excludes the property at the corner of Moorland Lane, Old Georgetown Road and Woodmont Avenue which is oriented towards Old Georgetown Road and is also excluded from the Transit Station Residential District in the Sector Plan. It also excludes properties west of Bethesda Elementary School because those uses are more oriented to the Edgemoor residential community. Tr. 17-21. The area is shown below in an aerial photo in the record as Exhibit 21:



The neighborhood coincides with the northern portion of the Transit Station Residential District as defined in the Bethesda CBD Sector Plan. The immediately adjoining properties are zoned TS-R, and the Bethesda Elementary School is in the R-60 zone. The neighborhood has a very diverse mix of uses, with the institutional use of the elementary school on the west; the three-story office use to the north; the TS-R properties immediately adjacent; and to the south, a mix of uses very similar to what Petitioner is proposing (*i.e.*, former single-family homes containing a variety of office uses) and a couple of high-rise, residential buildings.

B. The Master Plan

The property is located within the area covered by the *Bethesda CBD Sector Plan*, approved and adopted in July 1994. Technical Staff says little about the Master Plan, stating only that “There are no master plan implications of the use of this building as a non-residential professional office.” Exhibit 17, p. 4. The memorandum from Community-Based Planning Division (Attachment 9 to Exhibit 17) adds only that the proposed addition of shrubs and trees will provide shade and screening.

Petitioner’s land use expert, John Sekerak, testified that the Sector Plan identifies this property as being appropriate for an office use. Tr. 26-27. The “Future Land Use” Plan for the TS-R District (Figure 4.13 on page 81 of the Sector Plan) specifies that this property should be used for low density office use. Mr. Sekerak also pointed to page 80 of the Sector Plan, under the description of the TS-R District, where it states, “Most houses along Arlington Road have been converted to offices with their use limited to a few professional office categories.” On the same page, under the objectives of the TS-R District, the third objective is to “retain residential scale along Arlington Road,” which is consistent with Petitioner’s proposal. And, in the recommendations on that same page, the second to last sentence specifically states, “The Plan permits office uses in locations facing Arlington Road. . . .”

Based on these specific references in the Sector Plan, the Hearing Examiner concludes, as did Technical Staff and Petitioner's land use expert (Tr. 26-27), that the proposed use comports with the Master Plan.

C. The Proposed Use

Petitioner seeks to convert the existing residential structure on the subject site to an attorney's office (including a title company) with up to ten employees (including all professionals and staff). The subject property is owned by Philip Leibovitz and Nicole Mock, whose deed to the property is in the record as Exhibit 23. The owners authorized KATCO to file this petition for a special exception by letter dated October 31, 2006 (Exhibit 10). KATCO Investments, a family-owned investment company, is the contract purchaser of the property, and that contract is contingent on the special exception being approved. Tr. 6.

The hours of operation will be Monday through Friday, 8:30 a.m. - 6:00 p.m., and Saturday and Sunday 9:00 a.m. - 5:00 p.m. Client visits will be limited to no more than 10 per day.

As mentioned in footnote 1 of this report, the Petition itself (Exhibit 1(b)) refers only to a "Non-residential Professional Office (Attorneys)," however, Petitioner's Statement of Operations (Exhibit 3(a)) and Pre-Hearing Statement (Exhibit 3(c)) both refer to the inclusion of a "title company," as well. This fact is of some concern because Zoning Ordinance §59-G-2.38 strictly limits this use to a "member or members of a recognized profession."

An attorney is clearly such a professional, while a "title company" may not be. It is hard to tell on this record, because Petitioner has not spelled out how the title company portion of the use would function. The proposed sign for the office specifies "Title Attorney Offices." If the title company part of the operation is merely an administrative adjunct to the functioning of the title attorney's office (*i.e.*, providing administrative assistance to the attorneys and an incorporated entity to issue formal certifications of the attorneys' findings), then it would qualify as an "accessory use"

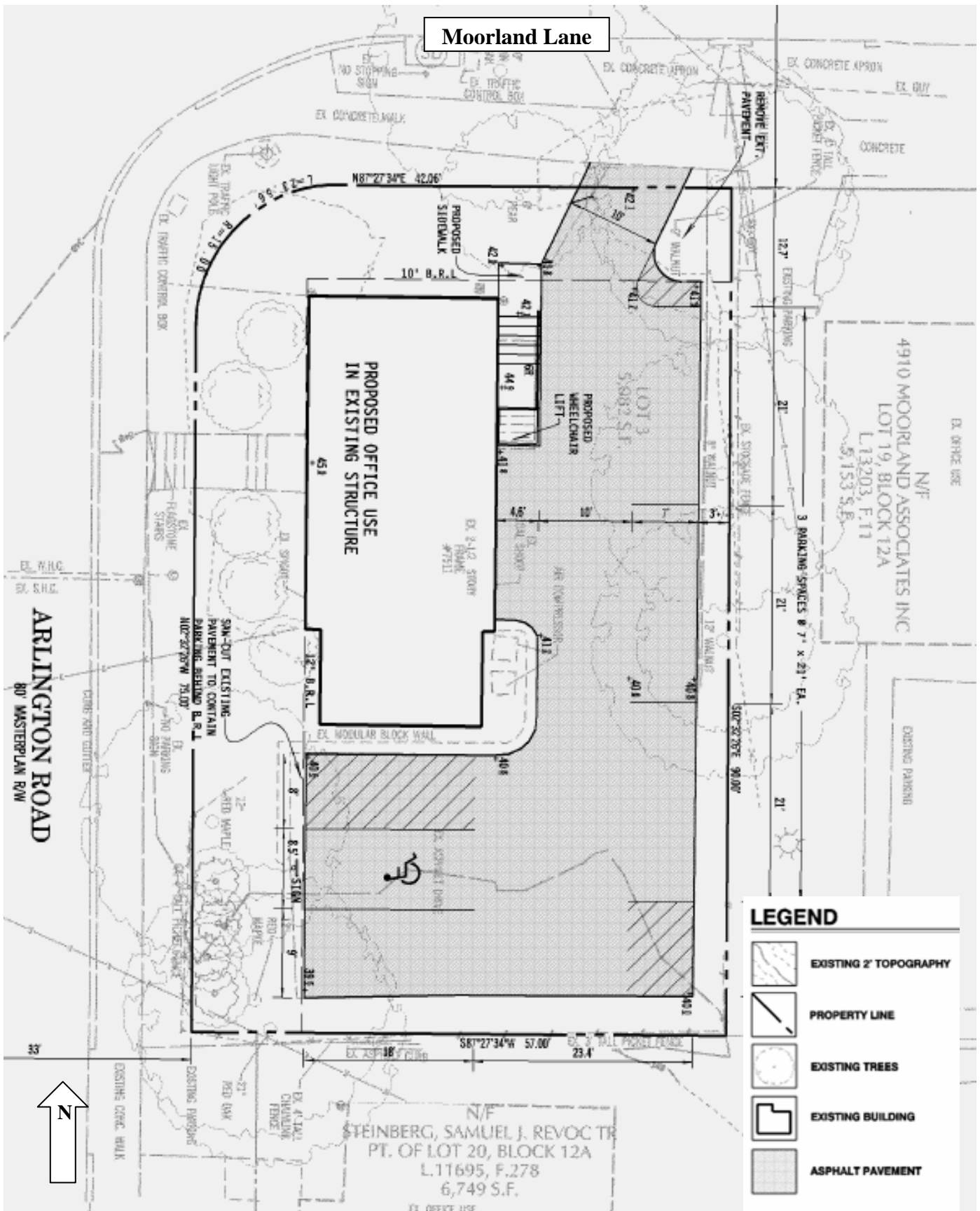
which is permitted in the R-60 Zone pursuant to Zoning Ordinance §59-C-1.13(g). An accessory use is defined in Zoning Ordinance §59-A-2.1, as:

A use which is (1) customarily incidental and subordinate to the principal use of a lot or the main building, and (2) located on the same lot as the principal use or building.

If the area surrounding the subject site were occupied by residential uses, this issue would require greater scrutiny to protect the residential character of the area; however, the fact is that the surrounding uses are all non-residential, as discussed in Parts II. A. and B. of this report. Moreover, the subject site itself is recommended for low density office use by the Sector Plan, as discussed in Part II. C. of this report. The Hearing Examiner is therefore less concerned about the potential impact of this proposed use. Nevertheless, in order to insure that the title company portion of this operation is strictly an accessory use in this case, the Hearing Examiner has recommended the following condition in Part V of this report:

The title company portion of this use is permitted solely as an accessory function to the law office use. It must be completely under the supervision of an attorney and must be subordinate and incidental to the law office use. The title company name may not be posted on any sign, nor may it be advertised as an entity existing at the subject site.

Petitioner will not be making any modifications to the exterior of the property except to add landscaping and a wheelchair lift at the rear of the property, with some expanded walkways, to make the property ADA accessible. Tr. 6. The landscape and lighting plan calls for some supplemental plantings, including three additional shade trees to complete the perimeter canopy of shade trees. Also, a couple of additional shrubs will be located in front of the property to help buffer the small parking area from Arlington Road. John Sekerak, Petitioner's land use planner, noted that the property is already well screened with vegetation and a picket fence, so very few supplemental plantings or other landscape treatments are necessary. No additional lighting is being proposed. Tr. 22. The Site Plan (Exhibit 24(a)) is shown on the following pages.



GENERAL NOTES

- Current zone is R-60. Corrective Map Amendment G-856 approved (R-15-1610) 9/19/06.
- Boundary and Topographic information based on survey by CAS Engineering in Dec 2004. Topographic information updated in October 2006 but no boundary survey was conducted or verified. No title information was provided to G&O and the information shown should not be considered the product of a boundary survey by this office.
- Property shown on Tax Map HN122, Part of Lot 3, Block 12A.
- Property shown on WSSC 200' sheet 209 NW 05.
- Property shown on Montgomery County soils survey Map # 27.
- Flood zone "C" per F.E.M.A. Firm Maps, Community Panel # 240049 0175 C.
- Water and Sewer Categories: W-1 and S-1.
- The site is within Bethesda Central Business District Sector Plan area of the Bethesda/Chevy Chase and Vicinity planning area.
- The site is within the Bethesda CBD Transportation policy area.
- The site is within the Little Falls Watershed (Class I).
- Servicing utility companies are:

| | |
|----------------|----------------|
| Water & Sewer: | WSSC |
| Electric: | PEPCO |
| Telephone: | Verizon |
| Natural Gas: | Washington Gas |
- This plan is not for construction. The locations of existing underground utilities are shown in their approximate locations as per available utility company records. The exact location of all underground utilities should be verified by "Miss Utility" (1-800-257-7777) prior to any excavation. Greenhorne & O'Mara, Inc. does not express or imply an guarantee or warranty as to the location or existence of any underground utility.

TRACT AREA TABULATION

| | | | |
|---|------------|----|----------|
| Gross Tract Area (GTA) = | 5,082 s.f. | or | 0.12 ac. |
| -Area Previously Dedicated to Public Use* = | 0 s.f. | or | 0.00 ac. |
| Residue = | 5,082 s.f. | or | 0.12 ac. |
| -Area to be Dedicated to Public Use = | 0 s.f. | or | 0.00 ac. |
| Net Lot Area (NLA) = | 5,082 s.f. | or | 0.12 ac. |

* Actual previous dedications have not been determined. Low intensity of proposed development makes the determination unnecessary.

TRAFFIC STATEMENT

| | | | |
|---|--|------------|--|
| Proposed use:* | | | |
| 2,115 s.f. GFA single tenant office use @ 1.80 AM peak hour trips per 1,000 s.f.= | | 3.81 trips | |
| 2,115 s.f. GFA single tenant office use @ 1.73 PM peak hour trips per 1,000 s.f.= | | 3.66 trips | |
| Previous use:** | | | |
| 1 d.u. SFD residential use @ 0.80 AM trips per d.u. = | | 0.80 trips | |
| 1 d.u. SFD residential use @ 0.80 PM trips per d.u. = | | 0.80 trips | |
| Net new peak-hour trips: | | | |
| Total new AM peak hour trips = | | 3.01 trips | |
| Total new PM peak hour trips = | | 2.86 trips | |

* Trip generation rates from Institute of Traffic Engineers Manual.

** Trip generation rates from MNCPPC LATR Guidelines (Appendix C) for the Bethesda CBD Policy Area.

DEVELOPMENT STANDARDS (R-60 ZONE)

| | REQ'D/PERMITTED | PROVIDED/EXISTING |
|---|-----------------|--------------------------|
| LOT AREA (59-C-1.322.(A)): | 6,000 S.F. MIN | 5,082 S.F.* |
| LOT WIDTH (59-C-1.322(B)): | | |
| - AT FRONT BUILDING LINE: | 60 FT. MIN | 57 FT. MIN.* |
| - AT STREET LINE | 25 FT. MIN | 140 FT. MIN (Corner Lot) |
| SETBACK FROM STREET(59-C-1.323(A)): | 25 FT. MIN | 11 FT. MIN* |
| SETBACK FROM ADJOINING LOT | | |
| - ONE SIDE (59-C-1.323(A)): | 8 FT. MIN | 24 FT. MIN. |
| - SUM OF BOTH SIDES (59-C-1.323(B)(1)): | 18 FT. MIN | N/A (Corner Lot) |
| - REAR (59-C-1.323(B)(2)): | 20 FT. MIN | 32 FT. MIN |
| BUILDING HEIGHT (59-A-2.1) & (59-C-1.327): | 35 FT. MAX | 28'-11*** |
| BUILDING COVERAGE (59-C-1.328): | 35% MAX | 20% MAX. |
| GREEN AREA (59-C-2.38) | 25% MIN. | 40% MIN. |

* Nonconformity through public taking (59-G-4.25(b)).

The Plat 308 (Edgemoor: Re-subdivision of part of Block 12) was recorded in 1925. The existing house was built in 1928. Subsequent R.O.W. dedications/acquisitions to Arlington Rd. and Moorland Ln. reduced residual setback from the existing house and lot width. Existing setbacks continue to meet the B.R.L. location established in 1925.

** Based on Mean of Ridge & Eave. Source: Studio Z Architects - September 2005 (35' Max.)
Re-determination of building height interpretation based on amended height standards is unnecessary due to grandfathering provisions of 59-A-5.44.

PARKING TABULATION

2,115 sf. GFA* office, professional,
non-residential use (59-E-3.7)
@ 2.5 spaces per 1000 s.f.=

5.3 spaces required 5 spaces provided

Including one accessible space for persons with disabilities.

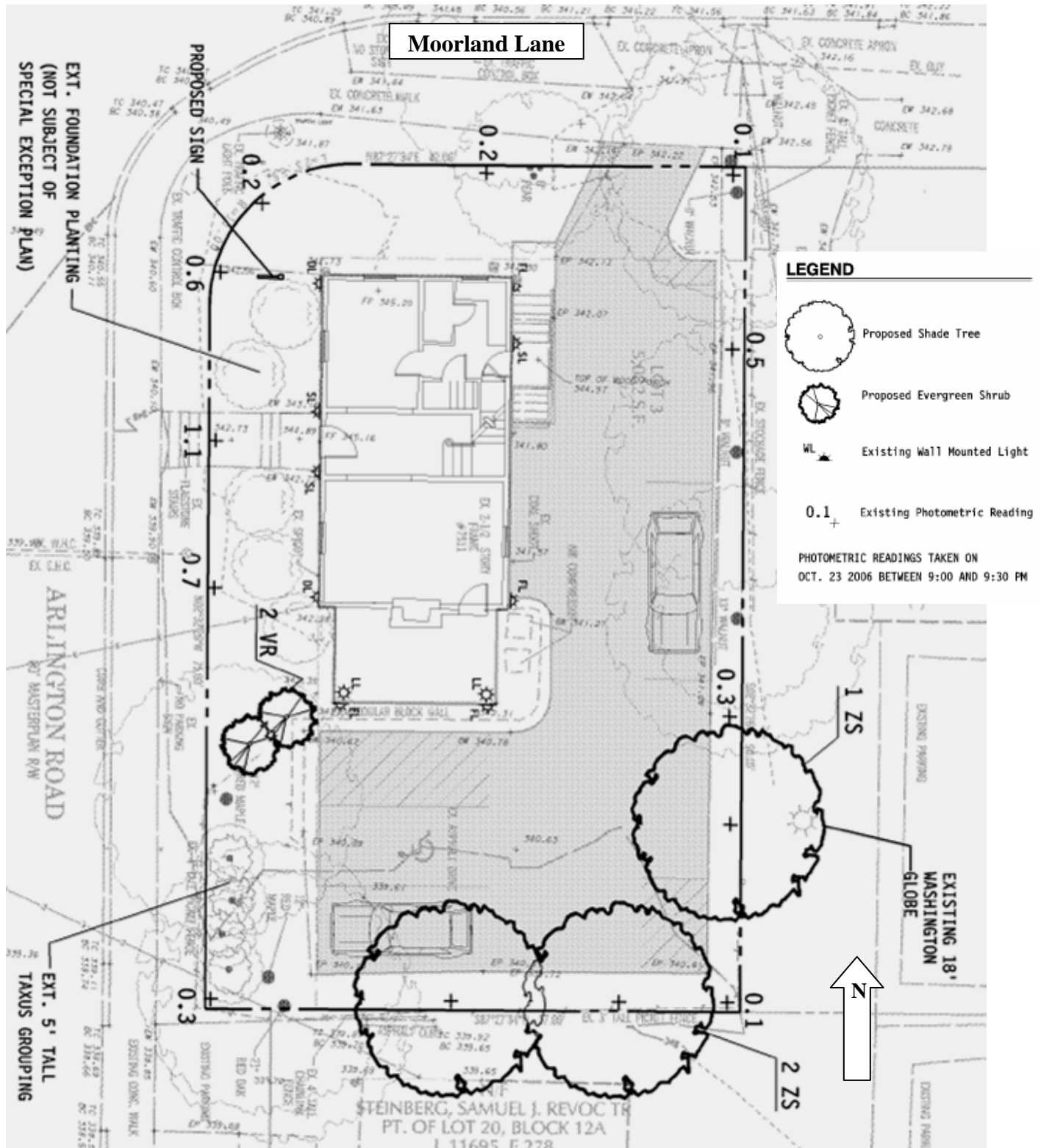
* Source: Studio Z Architects.

Parking Waivers requested in accordance with section 59-E-4.5:

| | | |
|---|---------------------|-------------------|
| - Number of parking spaces (59-E-3.7), | 5.3 spaces required | 5 spaces provided |
| - Drive aisle width (59-E-2.41), | 20 feet required | 10 feet provided |
| - Setbacks (59-E-2.83(b)) | | |
| - rear yard | 20 feet required | 3 feet provided |
| - side yard | 16 feet required | 4 feet provided |
| - Screening requirements (59-E-2.83(c)) | varies | varies |

The Landscape and Lighting Plan (Exhibit 24(b)), is shown on the following page. It shows four existing wall-mounted lights on the front of the structure, three wall-mounted lights on the rear and two wall-mounted lights on the south side of the structure. These light fixtures are designed to

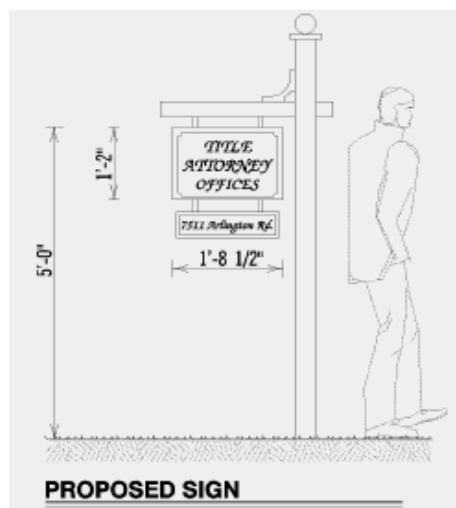
prevent glare in the surrounding properties and are intended to provide safe access for clients in the evening hours, as well as security for the property. Additional plantings are indicated on the plan.



Petitioner has also supplied floor plans (Exhibit 5(a)) and elevations (Exhibit 5(b)), which depict the existing house. As stated, it will remain unchanged except for the addition of a wheelchair lift on the rear.



Finally, Petitioner proposes an unlighted sign, measuring two square feet. Tr. 48. Its proposed location at the northwest corner of the site is indicated on the Landscape and Lighting Plan (Exhibit 24(b)), and its depiction on that Plan is reproduced below:



Although requirements for the sign were not discussed in the Technical Staff report, the Hearing Examiner's review of the Zoning Ordinance reveals that, under Code §59-F-9.1(a), even this two square-foot sign requires a permit because it will be permanently posted in a residential zone and does not meet any of the exceptions listed in Code §59-F-8. A condition is therefore recommended requiring a permit prior to posting of the sign.

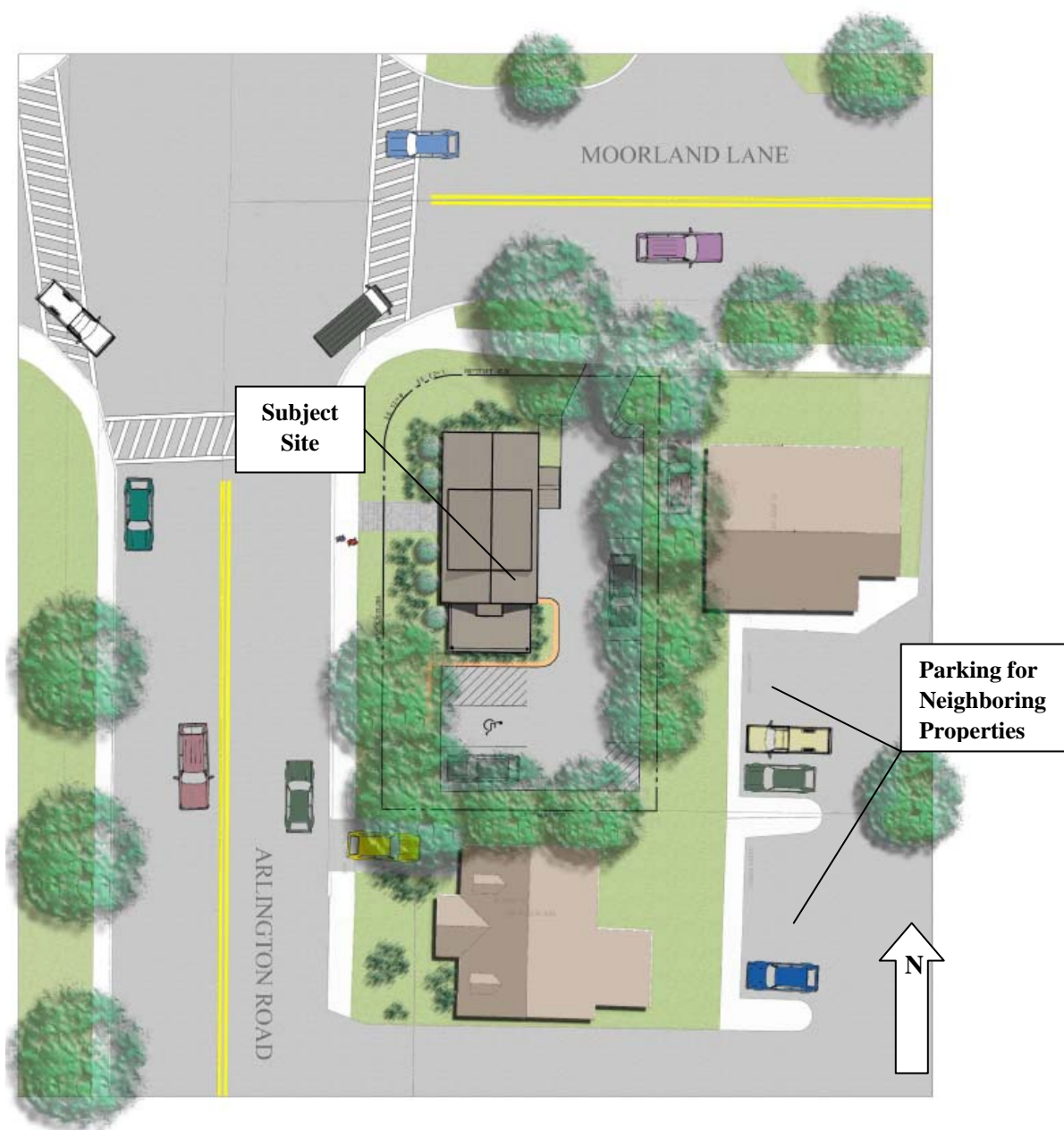
D. Parking Regulation Waivers

The petition also seeks the waiver of parking regulations in the Zoning Ordinance that govern the number of parking spaces (§59-E-3.7), drive-aisle width (§59-E-2.41), setbacks (§59-E-2.83(b)) and screening (§59-E-2.83(c)) for parking facilities in residential zones. Technical Staff supports all the parking waiver requests (Exhibit 17, pp. 3-4), as did the Planning Board (Exhibit 18).

Mr. Sekerak discussed the parking regulation waivers sought by Petitioner. The first relates to Zoning Ordinance §59-E-3.7, which requires 2.5 parking spaces per 1,000 square feet of professional, nonresidential office space. Since there will be 2,115 square feet of office space, the regulation

would call for 5.3 parking spaces. Petitioner can provide only 5. Mr. Sekerak feels that the fractional difference is inconsequential because of the site's location. Metro is less than a quarter of a mile away; the Bethesda Circulator stops nearby; there is metered on-street parking along Moorland Lane; and there are a number of public parking garages nearby. So, the reduction from 5.3 to 5 spaces is very appropriate. Tr. 42-43. Technical Staff agrees (Exhibit 17, p. 3) for the same reasons, as does the Hearing Examiner.

The remaining waiver requests are best understood by viewing Petitioner's Illustrative Plan (Exhibit 22), which is shown below:



Zoning Ordinance §59-E-2.41 requires, “if entrance and exit driveways are combined, [that] the combined driveway shall be not less than 20 feet in width.” Petitioner seeks to keep the existing 10-foot wide driveway. According to Mr. Sekerak, 20 feet of space is not available on this small property between the back of the structure and the property line. Because it is such a small parking facility (holding only five vehicles), the number of opportunities for conflict would be so infrequent that it is, in Mr. Sekerak’s opinion, unnecessary to provide the additional 10 feet of pavement. The 10-foot wide driveway being provided is sufficient. Tr. 44-45. Once again, Technical Staff agrees (Exhibit 17, p. 3) for the same reasons, as does the Hearing Examiner.

Zoning Ordinance §§59-E-2.83(b) and (c) provide expanded setback and screening requirements for parking facilities in residential zones. Petitioner cannot comply with the specified setbacks and still have room for parking. Mr. Sekerak noted that these regulations for residential zones assumed that the site would be surrounded by residential uses, which is not the case here. Mr. Sekerak feels that there is no need for the double side yard setback or for the rear yard setback for parking because the site is surrounded by nonresidential uses, and the neighbors’ parking is adjacent to the subject site, as can be seen in Exhibit 22 on the preceding page. Similarly, there is a requirement for screening with a six-foot high evergreen hedge or a solid wall or fence. According to Mr. Sekerak, that would be very inappropriate and out of character for this area. Tr. 45-48.

Petitioner therefore requests a waiver of approximately 17 feet from the rear yard setback requirement and a waiver of approximately 12 feet from the doubled side yard setback requirement. It also requests a waiver of the requirement to erect a 6 foot fence or hedge. Technical Staff agreed with Mr. Sekerak’s analysis, finding that neither the required setbacks, nor the additional 6 foot screening was necessary or appropriate for this site. Exhibit 17, pp. 3-4. The Hearing Examiner concurs.

The Board of Appeals is authorized to grant waivers of parking regulations pursuant to Zoning Ordinance §59-E-4.5, if it finds that adherence to the regulations is not necessary to

accomplish the objectives in Section 59-E-4.2 and that appropriate notice of the waiver requests was given. The required notice of the waiver requests was included in the Notice of Hearing (Exhibit 16) sent out to the required recipients on November 24, 2006. The Hearing Examiner finds that granting of the requested parking waivers would not inhibit accomplishment of the objectives set forth in Zoning Ordinance §59-E-4.2, including protection of the health, safety and welfare of those who use the adjoining land and the abutting public road, as well as the pedestrians and motorists within the parking facility.

E. Public Facilities

Transportation Planning staff reviewed the proposed operations and determined that the new use would generate only three peak-hour trips in both the morning and evening peak periods. Attachment 10 to Exhibit 17. Since the number of weekday, peak-hour trips will not exceed 30, there is no need for a traffic study to satisfy Local Area Transportation Review (LATR). Mr. Sekerak testified that the property will be served by adequate public services and facilities. There will be no impact upon school capacity. Both fire and police services are within a half mile; fire less than a half mile to the north, and police less than a half mile to the south. Water, sewer and other utilities are present along the frontage. Tr. 29-30. The Hearing Examiner finds that the public facilities are adequate.

F. Environment

The site is not within a Special Protection Area. It has been granted an exemption from Forest Conservation Requirements of Chapter 22A because it is a small site, and no clearing of existing forest or trees is proposed. Exhibit 7. Technical Staff reports that “There are no environmental issues or concerns associated with the subject proposal.” Exhibit 17, p. 6. The Hearing Examiner so finds.

G. Community Response.

There has been no community reaction to the subject Petition. The People’s Counsel supported the petition. Tr. 53.

III. SUMMARY OF THE HEARING

Two witnesses testified at the hearing, Petitioner's representative, Max Cohen, and Petitioner's land use planner, John Sekerak. At the inception of the hearing, Petitioner's attorney, Megan Wallace, agreed to the conditions proposed by Technical Staff in this case. Tr. 5. Ms. Wallace also noted that Petitioner had recently discovered that the notice sign had disappeared. She indicated that the sign was there prior to March 9, 2007, and had been regularly checked on since November 2006. Ms. Wallace promised that the sign would be immediately replaced, and the affidavit of posting (Exhibit 19) so reflects. Tr. 7-9. Martin Klauber, the People's Counsel, participated in the hearing but did not call any witnesses. At his suggestion, Petitioner agreed to amend the Site Plan to show more information about the parking regulation waivers in the "Parking Tabulation" section of the plan. Tr. 50-51. Mr. Klauber supported the petition and the conditions proposed by Technical Staff. Tr. 53.

1. Max Cohen (Tr. 10-12):

Max Cohen testified that KATCO Investments is a family-owned investment company, and he is its representative. He accepts the conditions proposed in the Technical Staff report, as well as its analysis, findings and conclusions. Mr. Cohen believes that the use of this property as a law office with no more than ten client visits a day and no more than ten employees utilizing the five parking spaces, would not constitute any unusual burden on the neighborhood.

2. John Sekerak (Tr. 12-50):

John Sekerak testified as an expert in land planning. Mr. Sekerak mentioned that the property had been incorrectly rezoned to TS-R by the Bethesda Central Business District Sectional Map Amendment, and that Council Resolution 15-1610 (Exhibit 11) had restored the site to the R-60 Zone.

Mr. Sekerak described the subject property and surrounding area. He noted that the property was platted in 1925 as a 6,500 square foot lot, but subsequent right-of-way acquisitions have reduced

it down to its existing area of 5,082 square feet. Tr. 16-17. It is improved with a recently refurbished two and a half story single-family detached home, which is currently vacant. There's a driveway for the property located on Moorland Lane and a small parking area to the east and south of the structure itself.

Mr. Sekerak used the certified zoning map (Exhibit 20) and an aerial photo of the same area (Exhibit 21) to describe the general neighborhood. It is bordered by Wilson Lane and Old Georgetown Road to the north; Woodmont Avenue to the east; Edgemoor Lane to the south; and the western edge of Bethesda Elementary School to the west. This definition excludes the property at the corner of Moorland Lane, Old Georgetown Road and Woodmont Avenue which is oriented towards Old Georgetown Road and is also excluded from the Transit Station Residential District in the Sector Plan. It also excludes properties west of Bethesda Elementary School because those uses are more oriented to the Edgemoor residential community. Tr. 17-21.

To the east of the subject site is a similar former single-family home used for medical offices. To the south, another former single-family home is used for insurance offices. Directly confronting properties to the west across Arlington Road is the Bethesda Elementary School and to the north is a three-story office building in the CBD zone. Those immediately adjoining properties are zoned TS-R, and the Bethesda Elementary School is in the R-60 zone.

The neighborhood coincides with the northern portion of the Transit Station Residential District as defined in the Bethesda CBD Sector Plan.

Mr. Sekerak considers Technical Staff's neighborhood definition as extraordinarily expansive considering the nature of the proposed use in the context of the neighborhood, especially when it comes to the demarcation of the neighborhood to the west. He noted that the nature of the neighborhood changes sharply behind properties that front along Arlington Road. To the north, Old Georgetown Road forms a good demarcation line for a small property like this. In his opinion, his

own definition of the general neighborhood is one that more clearly defines the area that would interact with the proposed special use, as distinguished from what Technical Staff suggested.

The neighborhood has a very diverse mix of uses, with the institutional use of the elementary school on the west; the three-story office use to the north; the TS-R properties immediately adjacent; and to the south, a mix of very similar uses to what Petitioner is proposing, former single-family homes used as a variety of office uses and a couple of high-rise residential buildings.

In Mr. Sekerak's opinion, the proposal is very compatible with the neighborhood. This is an appropriate use, and one recommended by the master plan for the property. It is well situated for the site. Tr. 22. Mr. Sekerak identified the four photographs included in the record as Exhibits 9(a) through (d). He also noted that the landscape and lighting plan calls for some supplemental plantings, including three additional shade trees to complete the perimeter canopy of shade trees. Also, a couple of additional shrubs will be located in front of the property to help buffer the small parking area from Arlington Road. Other than that, the property is already well screened with vegetation and a picket fence, so very little supplemental plantings or other landscape treatments are necessary. No additional lighting is being proposed. Tr. 22.

Mr. Sekerak testified that the Sector Plan does identify this property as being appropriate for a low intensity office use in its Land Use Map. He also pointed to page 80 of the Sector Plan, under the description of the TS-R District, where it states, "Most houses along Arlington Road have been converted to offices with their use limited to a few professional office categories." On the same page, under the objectives of the TS-R District, the third objective is to "retain residential scale along Arlington Road," which is consistent with Petitioner's proposal. And, in the recommendations on that same page, the second to last sentence specifically states, "The Plan permits office uses in locations facing Arlington Road. . . ." This clearly satisfies the general requirements for offices in

the R-60 zone specified in footnote 44 to Zoning Ordinance §59-C-1.31 that the applicable Master Plan must specify it as suitable for a non-residential professional office use.

Mr. Sekerak testified that the proposed use would satisfy all the general and specific requirements set forth in the Zoning Ordinance. This use would be extremely compatible with those immediately adjacent to it and goes well in the neighborhood. It is very similar in its use and it is very complimentary to the diverse uses in the neighborhood. The corner property here will be very similar to the properties on either side along Moorland Lane and Arlington Road, and it will have no detrimental effect on those adjoining uses.

It will cause no objectionable noise, vibration, fumes, odors, dust, illumination, glare or physical activity. Mr. Sekerak was not aware of any other special exception uses within this neighborhood. Many of the uses formerly had special exceptions, but when they were re-designated to the TS-R Zone, they were then permitted uses in that zone, and the special exceptions were no longer necessary.

He would not characterize the area as a one-family residential area. It's very diverse in the number of uses, and there is only one other single-family detached home in the area currently being used as residential.

Mr. Sekerak further testified that the use will not adversely affect the health, safety, security, morals and general welfare of the residents, visitors or workers in the area.

The property will be served by adequate public services and facilities. It will have no impact upon school capacity. Both fire and police are within the one-half mile; fire less than a half mile to the north, police less than a half mile to the south. Water, sewer and other utilities are in place along the frontage.

The property has already been recorded by record plat, and no further subdivision will be required, so the Board of Appeals must review the adequacy of public facilities. For local area

review, 30 trips is considered the threshold for properties that would require a sufficient number of trips to have any perceptible or measurable impact on a local area. The proposed use will only generate 3.01 new morning trips and 2.86 evening trips. So, even with the 30 trip threshold being considered measurable, this is a mere fraction of that. These figures are discounted by the small number of trips that the previous residential use would have caused. The traffic statement is imprinted directly on the site plan for special exception. The rates were from the Institute of Traffic Engineers Manual (ITE), and the single-family detached home rates were taken from the LATR guidelines. So, the net result is a combination of both ITE and Park and Planning guidelines.

In Mr. Sekerak's opinion, the proposed use will be safe is both for vehicular and pedestrian traffic. Petitioner is not proposing any access onto the heavily traveled Arlington Road. The plan contains pedestrian sidewalks, so there would be no reduction in the safety for this area. It is a safe situation now, and the use will not be degrading that at all.

The development standards are specified on the face of the site plan for a special exception and the use meets those requirements. This is not a residential area, so the 0.1 foot candles standard does not apply. All the adjoining properties are actually nonresidential uses. No lighting is being added, and in Mr. Sekerak's opinion, it would be inappropriate to remove light sources from this proposed nonresidential use. The amount of light there now is necessary for safety in the parking lot, and it is a very appropriate light level, and not obtrusive.

The use is exempt from the forest conservation law because it is a small property without stream valley buffer and specimen trees, and it is not within a special protection area so the water quality plan is not applicable.

Petitioner proposes only one two-square foot sign, in conformance with Article 59F. It is a hanging shingle for the lawyers' office, and it is shown on the Landscape and Lighting Plan. The location of the proposed sign will be at the corner of Moorland and Arlington Road.

Section 59G-2.38 provides that an existing single-family structure may be used for professional office purposes by any member or members of a recognized profession. It then lists a number of professions, which includes lawyers. The proposed law office conforms with that, according to Mr. Sekerak. Tr. 32.

The second portion of §59-G-2.38 requires that the use meet one of three alternative criteria, and Mr. Sekerak opined that the use meets the second because it is designated as being suitable for nonresidential professional offices in the R-60 Zone in the *1994 Bethesda CBD Sector Plan*, and it is located along an arterial road (Arlington Road), a portion of which is designated as a boundary of a Central Business District. Mr. Sekerak noted that it also satisfies the intent, but not the literal terms, of the first alternative, because it is not strictly within the CBD, though it is part of the CBD planning area and has been designated as suitable for the TS-R Zone. Tr. 39-40.

Mr. Sekerak further testified that the proposed use meets the other criteria contained in §59-G-2.38, in that it will not constitute a nuisance because of traffic or physical activity, will not adversely affect adjacent property and will have 40% green area. Moreover the single-family character and residential appearance will be retained. It is not designated historic. Tr. 41.

Mr. Sekerak opined that the inherent characteristics would be increased daytime activity by staff and visitors and some parking. This will be very consistent with those other properties in the area and will have no adverse inherent effects. It would have no non-inherent effects that would adversely affect the neighborhood, and it will be typical of residential office use. In Mr. Sekerak's expert opinion, the application satisfies all the requirements of the Zoning Ordinance. Tr. 41-42.

Mr. Sekerak discussed the parking regulation waivers sought by Petitioner. The first is the requirement of Zoning Ordinance §59-E-3.7 that would call for 5.3 parking spaces, and Petitioner can provide only 5. Mr. Sekerak feels that the fractional difference is inconsequential because of the site's location. Metro is less than a quarter of a mile away; the Bethesda Circulator stops nearby;

there is metered on-street parking along Moorland Lane; and there are a number of public parking garages nearby. So, the reduction of from 5.3 to 5 spaces is very appropriate. Tr. 42-43. The handicap accessible space is one of the total number of spaces required. It is not an additional space, and in context of this urban setting of on-street parking, Metro and available public transportation, it's not significant. Tr. 42-44.

The next waiver concerns the requirement that driveways for entering and exiting parking lots, if they're designed for two-way traffic, must be 20 feet in width so two cars can pass simultaneously. This parking facility has only five spaces, and there is not 20 feet available on this small property between the back of the structure and the property line. Because it is such a small parking facility, the number of opportunities for conflict would be so infrequent that it is, in Mr. Sekerak's opinion, unnecessary to provide that much additional pavement. The one-way, 10 foot wide driveway being provided is sufficient. Tr. 44-45.

The final waiver requests concern side yard setbacks and screening requirements. Mr. Sekerak opined that the doubled setbacks are not necessary in this context and would make the site essentially unusable as a professional office, even though it is specifically recommended for that in the Master Plan. These regulations for residential zones assumed that the site would be surrounded by residential uses, which this site is not. Mr. Sekerak feels that there is no need for the double side yard setback or for the rear yard setback for parking because the site is surrounded by nonresidential uses with parking adjacent to it. Tr. 45-48

Similarly, there is a requirement for screening with a six foot high evergreen landscaping or a solid wall. According to Mr. Sekerak, that would be very inappropriate and out of character for this area. Tr. 48.

Mr. Sekerak indicated that the proposed sign would be in conformance with Zoning Ordinance Chapter 59F, one freestanding sign not to exceed two square feet and not lit, other than the ambient lighting. Tr. 48.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Based on the testimony and evidence of record, the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a non-resident attorney's office. Characteristics of the proposed non-resident attorney's office use that are consistent with the "necessarily associated" characteristics of non-resident attorney's office uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with non-resident attorney's office uses, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the physical and operational characteristics necessarily associated with a non-resident attorney's office include "associated parking, lighting and noise generated by clients and vehicular trips to and from the site." Exhibit 17, p. 8.

Technical Staff observed that (Exhibit 17, pp. 8-9):

There are no significant transportation impacts that would result from the proposed special exception. The applicant is seeking a waiver from standard parking requirements. There are metered parking and public parking garages in the area. There will be no changes to the existing dwelling, or driveway. Existing lighting on the property is adequate and consistent with the character of the neighborhood. All of the lighting fixtures are mounted on the front, sides and rear of the dwelling. No new lighting will be added. The front and rear yards are well landscaped with mature trees. Flowers and shrubbery are located in the front, side and rear of the dwelling.

Technical Staff therefore concluded, "Provided that the applicant complies with the recommended conditions, there will be no unacceptable inherent impacts associated with the subject proposal that warrant denial." Exhibit 17, p. 9.

Petitioner's land use planner, John Sekerak, testified that the inherent characteristics would be increased daytime activity by staff and visitors, and some parking. In his opinion, this will be

very consistent with those other properties in the area and will have no adverse inherent effects. It would have no non-inherent effects that would adversely affect the neighborhood, and it will be typical of residential office use. Tr. 41-42.

The Hearing Examiner agrees with both Mr. Sekerak and Technical Staff. There is nothing atypical about the proposed use, except perhaps the inclusion of the “title company” function. As discussed in Part II.C. of this report, the Hearing Examiner has recommended a condition to ensure that the title company is strictly an accessory function to the law office use. With this restriction, the Hearing Examiner finds that the physical and operational characteristics of the proposed attorney’s office (*i.e.*, hours, number of staff and traffic generated) are consistent with those encountered with any attorney’s office located in a residential structure. Therefore, based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects arising from the subject use.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the other exhibits and the testimony of the Petitioner’s witnesses provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A nonresidential professional office use is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31, “[i]f designated as being suitable for nonresidential professional offices on an approved and adopted master or sector plan,” which is the case here.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.38 for a nonresident's professional office use, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The property is located within the area covered by the 1994 *Bethesda CBD Sector Plan*. The "Future Land Use" Plan for the TS-R District (Figure 4.13 on page 81 of the Sector Plan) specifies that this property should be used for low density office use. The recommendations on page 80 of the Sector Plan, indicates that, "The Plan permits office uses in locations facing Arlington Road. . . ." Thus, the Hearing Examiner finds, as did Technical Staff and Petitioner's land use planner, that the proposed use is consistent with the applicable Master Plan, as discussed more fully in Part II. B. of this report.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because it will blend in with the uses and structures in the surrounding neighborhood

and serve as a transition to the other uses in the nearby CBD. In Mr. Sekerak's opinion, the proposal is very compatible with the neighborhood. This is an appropriate use, and one recommended by the Master Plan for the property. It is well situated for the site, and it will not generate any significant change in traffic conditions. Tr. 22. Technical Staff found that the proposed special exception will not increase the intensity of activity or traffic and will provide sufficient parking (5 spaces) so as to not adversely affect parking conditions in the neighborhood. Daily client visits are not expected to exceed 10 and will be spread throughout the day. Metered parking and public parking spaces are available in the immediately surrounding area, and the property is located approximately 1,150 feet from the Bethesda Metro. The exterior of the building will be fundamentally unchanged and thus will retain its single-family character and residential appearance. Exhibit 17, 10. The Hearing Examiner finds that the proposed use will be in harmony with its surroundings.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site, all of which are occupied by commercial and institutional uses.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the nature of the proposed use (*i.e.*, an attorney's office), the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Tr. 28-29, 35.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff did not report any other special exceptions in the area. Mr. Sekerak noted that nearby properties are in the TS-R Zone, and thus do not need special exceptions for their small office uses. Tr. 29. Therefore, the Hearing examiner concludes, as did Technical Staff, that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Petitioner's land use expert testified that there were adequate public facilities serving the office in question. It will have no impact upon school capacity. Both fire and police services are within one-half mile; fire less than a half mile to the north, and police less than a half mile to the south. Water, sewer and other utilities are in place along the frontage. Tr. 29-30. Technical Staff also found, and the Hearing Examiner

agrees, that the subject property is adequately served by the specified public services and facilities. Exhibit 17, p. 11.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review,⁵ as required in the applicable Annual Growth Policy.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of the Local Area Transportation Review (“LATR”). Transportation Planning staff reviewed the proposed operations and determined that the new use would generate only three peak-hour trips in the morning and evening peak periods. Attachment 10 to Exhibit 17. Since the number of weekday, peak-hour trips will not exceed 30, there is no need for a traffic study to satisfy Local Area Transportation Review (LATR). Therefore, the Technical Staff concluded, as does the Hearing Examiner, that the use will be served by adequate public facilities.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: Mr. Sekerak’s testified that the proposed use will be safe is both for vehicular and

⁵ Policy Area Transportation Review (PATR) was eliminated in the 2003-2005 Annual Growth Policy-Policy Element, and therefore is inapplicable.

pedestrian traffic. Tr. 32. Petitioner is not proposing any access onto the heavily traveled Arlington Road. The plan contains pedestrian sidewalks, so there would be no reduction in the safety for this area. It is a safe situation now, and the use will not degrade that safety level. The Hearing Examiner finds that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record [including the Technical Staff Report (Exhibit 17)] provide sufficient evidence that the specific standards required by Section 59-G-2.38 are satisfied in this case, as described below.

Sec. 59-G-2.38 Offices, professional, non-residential

An existing single-family structure may be used for professional office purposes by any member or members of a recognized profession, such as a doctor, lawyer, architect, accountant, engineer, veterinarian, but not including the following:

- (a) a medical, dental or veterinarian clinic*
- (b) an in-patient treatment facility*
- (c) a general business office, such as an insurance company office, a trade association, a manufacturing company, an investment company, a bank or a real estate company.*

Conclusion: The proposed use as an attorney's office (with an accessory use as a title company) is consistent with the permitted professional office purposes, as discussed in Part II. C. of this report.

The property must be:

- a) Located in a central business district that is designated as being suitable for the transit station-residential (TS-R) zone on an approved and adopted sector plan;*
- b) Designated as being suitable for nonresidential professional offices in the R-60 zone on an approved and adopted master or sector plan and is located along a major highway with an existing right-of-way width of no less than 90 feet or along a portion of an arterial road designated as a boundary of a central business district; or*

(c) located in the R-90 zone and:

- (1) designated as historic in the Master Plan for Historic Preservation;*
- (2) located along a highway with an existing right-of-way of at least 120 feet; and*
- (3) contain a structure formerly used for nonresidential purposes.*

Conclusion: The property is not located in a central business district or in the R-90 Zone, so it does not meet either criterion “a” or criterion “c.” However, it does meet criterion “b” because it is designated as being suitable for low density offices in the R-60 Zone in the *1994 Bethesda CBD Sector Plan*, and it is located along an arterial road (Arlington Road), a portion of which is designated as a boundary of a central business district. Tr. 39-40.

The Board must find that the property:

- (a) will not constitute a nuisance because of traffic or physical activity;*
- (b) will not affect adversely the use and development of adjacent property;*
- (c) will have at least 25 percent of the lot area devoted to green area.*

Conclusion: The use will not constitute a traffic nuisance because activity will be of a low intensity and will be limited to 10 client visits per day. The use will occur primarily indoors and will not contribute noise or visual intrusion to the community. The appearance of the use will be residential. The Hearing Examiner finds that the proposed use will not constitute a nuisance or affect adversely the use and development of adjacent properties. The un rebutted testimony is that the site will have about 40% green area, thus exceeding the 25% requirement. Tr. 40. *See also* Development Standards Table on the Site Plan (Exhibit 23(a)).

The Board may allow for other than a building designated as historic in the Master Plan of Historic Preservation, the exterior of the premises to be changed, altered or modified provided the single-family character and the basic residential appearance of the building are retained. A historic area work permit must be obtained before any work may be done to alter the exterior features of an historic structure.

Conclusion: The exterior of the structure will be unchanged except for the addition of a wheelchair lift in the rear to make it ADA compatible. Tr. 6. The Hearing Examiner therefore concludes that the single-family character of the building will be retained. There is no historic designation for the building in question.

D. Additional Applicable Standards

59-G-1.23. General development standards.

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The subject site does not meet current front-yard setback and lot-width standards because government acquisitions for Arlington Road and Moorland Lane rights-of-way reduced the lot size from its initial size when recorded in 1925. Tr. 16-17. Under Zoning Ordinance §59-G-4.25(b), a building or structure is not a nonconforming building or structure if:

the lot on which the building or structure is located is reduced in area by a taking under eminent domain or another government action that would otherwise make the building or structure nonconforming because a dimension of the building or structure, or the location on the lot, is deficient.

The building or structure may be repaired, altered, or reconstructed, if it is an otherwise lawful use, except that the construction must not change any dimension of the building or structure that is deficient.
[Emphasis added.]

Petitioner's revised plan will not "change any dimension of the building that is deficient," and it meets other applicable development standards, as demonstrated in the following matrix from the Technical Staff report, p. 7 (modified by the Hearing Examiner to include corrections to the table and information in Petitioner's plans):

| Development Standards | Required (currently) | Proposed/Existing |
|--|---|---|
| Minimum Lot Area | 6,000 sq. ft. | 5,082 sq. ft.* |
| Minimum Lot Width <ul style="list-style-type: none"> • At front building line • At street line | 60 feet 25 feet | 57 feet * 140 feet (corner lot) |
| Minimum Building Setback: Front Yard Side Yard <ul style="list-style-type: none"> • One side yard • Sum of both sides Rear Yard | 25 feet 8 feet 18 feet 20 feet | 11 feet (approx.)* 24 N/A (corner lot) 32 feet (approx.) |
| Maximum Bldg. Height | 2 ½ stories or 35 feet | 29 feet (approx.) |
| Maximum Bldg. Coverage | 35 percent | 20 percent |
| Green Area | 25% | 40% |

* The property was platted in 1925 as a 6,500 square foot lot. Tr. 16-17. Petitioner's revised Site Plan (Exhibit 24(a)) indicates that public taking and subsequent right-of-way dedications and acquisitions to Arlington Road and Moorland Lane reduced the residual setback and lot width to their present condition. The house was built in 1928, and the existing setbacks continue to meet the building restriction line location established in 1925. Technical Staff does not take issue with these assertions, nor is there any evidence to the contrary in the record.

Given the exception provided in Zoning Ordinance §59-G-4.25(b), and the undisputed evidence that the current dimensions of the lot are the result of government takings, the Hearing Examiner finds that Petitioner's proposal meets applicable development standards.

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As noted previously, the subject site complies with applicable parking regulations, except to the extent that waivers have been sought. Those waiver requests are discussed at length in Part II. D of this report, and for the reasons stated therein, the

Hearing Examiner recommends that the waivers be granted.

(c) *Minimum frontage* * * *

Conclusion: Not applicable.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Not applicable because Petitioner has been granted an exemption from the Forest Conservation Requirements of Chapter 22A. Exhibit 7.

(e) *Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Not applicable.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As indicated earlier in this report, under Code §59-F-9.1(a), the two square-foot sign proposed by Petitioner requires a permit because it will be permanently posted in a residential zone and does not meet any of the exceptions listed in Code §59-F-8. A condition is therefore recommended requiring a permit prior to posting of the sign.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As mentioned above, there will be no alteration to the structure other than the addition of a wheelchair lift in the rear. The structure will maintain its residential appearance.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Petitioner will not be changing the external lighting on the site. Though this site is located in a residential zone, there are no adjacent residential uses, so the 0.1 foot candles standard may not apply. In Mr. Sekerak's opinion, it would be inappropriate to remove light sources from this proposed nonresidential use. The amount of light there now is necessary for safety in the parking lot, and it is a very appropriate and unobtrusive light level. Tr. 35. Technical Staff agreed, stating that "The lighting plan will not adversely affect surrounding properties." Exhibit 17, p. 3 Based on this evidence, the Hearing Examiner finds that the site lighting is appropriate and necessary for safety, and that it will not adversely affect adjacent properties.

59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As mentioned above, the residential character of the building will be retained.

Based on the testimony and evidence of record, I conclude that the non-residential professional office use proposed by Petitioner, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition and requested parking regulation waivers should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2690, seeking a special exception for a non-resident professional (attorney's) office use, located at 7511 Arlington Road, Bethesda, Maryland, and waiver of parking regulations contained in Zoning Ordinance §§59-E-3.7, 2.41, 2.83(b) and 2.83(c), be GRANTED, with the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner shall provide five parking spaces on site, including one handicapped accessible space. Landscaping shall be provided as specified in the Landscape and Lighting Plan (Exhibit 24(b)).
3. The special exception will operate with a maximum of 10 individuals, professional and staff combined, and shall have a maximum of 10 client visits per day to the office. Petitioner shall keep a log of client visits, which must be available for inspection by the Department of Permitting Services.
4. The title company portion of this use is permitted solely as an accessory function to the law office use. It must be completely under the supervision of an attorney and must be subordinate and incidental to the law office use. The title company name may not be posted on any sign, nor may it be advertised as an entity existing at the subject site.
5. Total interior floor space of the use is limited to 2,115 square feet, and the structure must retain its residential character.

6. The hours of operation will be 8:30 a.m. to 6 p.m., Monday through Friday, and 9 a.m. to 5 p.m. on Saturday and Sunday.
7. Petitioner will make information available to clients about the local public parking and transportation facilities.
8. Petitioner may not post the sign it proposes until it obtains a permit therefor pursuant to Code §59-F-9.1(a). The sign should not exceed two square feet, and a copy of the permit should be filed with the Board of Appeals.
9. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 27, 2007

Respectfully submitted,

Martin L. Grossman
Hearing Examiner